



66418-066-7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) PATENT
Lars JOHNSEN)
Serial No.: 09/936,820) GROUP: 3727
Filed: October 23, 2001) EXAMINER: N. ELOSHWAY
A LID FOR CLOSING A CONTAINER) CUSTOMER NO.: 25269
) CONFIRMATION NO.: 1479

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SUBMISSION OF SUBSTITUTE APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 14, 2006

Sir:

Referring to the Notification of Non-Compliant Appeal Brief, dated August 15, 2006, the undersigned herewith submits a substitute Appeal Brief which includes "evidence" and "related proceedings" appendices as required.

Respectfully submitted,

By:

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APPEAL BRIEF

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Sir:

1. Real Party In Interest

The real party in interest to this appeal is Lid System A/S of Tarm,
Denmark.

2. Related Appeals and Interferences

There are no other known appeals or interferences which would
have a bearing on, or be influenced by, the present appeal.

3. Status of Claims

Claims 1-55 were presented to the examiner for consideration
during the prosecution of this application. Claims 1-40 have been
canceled. Claims 41-49 and 52-55 are on appeal. Claims 50 and 51 have
been objected to as being based on a rejected base claim but have been

identified as being allowable if rewritten in independent form. Claims 41-49 and 52-55 are reproduced in Claims Appendix A.

4. Status of Amendments

A Request for Reconsideration was filed subsequent to the issuance of the final Office Action of December 30, 2005. By Advisory Action of April 11, 2006, the examiner stated that the Request for Reconsideration had been considered but did not place the application in condition for allowance.

5. Summary of Claimed Subject Matter

The present invention relates to a lid for closing the neck of a container and which is easily removed without need of a tool (page 2, lines 10-12).

As defined in claim 55, the lid (hereinafter lid assembly) includes an outer lid member 3 and an inner lid member 5, the outer lid member including a top part 6 and a cylindrical collar 3 defining inwardly-extending threads 4 and a single inwardly-extending protrusion 13 (see page 2, line 25 to page 3, line 2) which is located below the inner lid member at a level of an upper edge of a container neck when the lid assembly is attached to the container. The inner lid member is planar (see page 7, line 18) and formed of a first layer for sealing against the upper edge of the container and is made of a soft thermoplastic elastomer (see original claim 9), a second layer which displays gas barrier properties (see original claim 9), and a third layer of thermoplastics which covers the second layer, the third layer making contact with the outer lid (see

original claim 9) and having a relatively low friction coefficient with the outer lid while the first layer has a relatively higher friction coefficient with the upper edge of the container neck. During removal of the lid assembly from the neck of a container, the outer lid is rotated relative to the neck and the protrusion exerts an upward pressure against an edge of the inner lid member to cause the inner lid member to be pointwise separated from the upper edge of the neck as the out lid is rotated (page 2, lines 15-24 and original claim 19).

The first layer of the inner lid can be formed of low density polyolefins such as polyethylenes (see original claims 12 and 13), the second layer can consist of aluminum (see page 5, lines 24-26 and original claim 11), and the third layer can be formed of polyolefins such as polyethylene, polypropylene, ethylene vinyl acetate plastics or polyester (see page 6, lines 1-9 and original claims 14-18).

The diameter of the inner lid can be larger than the external diameter of the container neck, but simultaneously smaller than the internal diameter of the outer lid, the protrusion of the collar extending radially inwardly to an outer surface of the container neck (see page 3, lines 4-11 and original claim 2).

The center of the inner lid can be secured to the outer lid with a rotatable securing means, wherein a container vacuum through the inner lid pulls the centre of the outer lid downwards, thereby deflecting a subarea of the outer lid (see page 4, lines 28-34 and original claim 8).

The collar of the lid can include an inwardly-directed annular ring as a securing means for the inner lid, said ring extending in an oblique direction relative to the inner lid (see page 4, lines 7-12 and original claim 5).

In a method of opening a lid assembly of the invention from the neck of a container, the lid assembly is twisted, during which a pointwise upwardly directed pressure is created on the edge of the inner lid, an opening to the volume of the container thus being created and the volume being vented (see page 6, lines 11-20 and original claim 19).

6. Grounds of Rejection to be Reviewed

a. First rejection: Whether the examiner has properly rejected claims 49 and 52-55 under 35 U.S.C. 103(a) as being unpatentable over Geiger (U.S. Patent No. 4,473,163) in view of Lecinski (GB 2,122,178) and Acton (U.S. Patent No. 3,006,493).

b. Second rejection: Whether the examiner has properly rejected claims 49 and 52-55 under 35 U.S.C. 103(a) as being unpatentable over Geiger (U.S. Patent no. 4,473,163) in view of Hayes (U.S. Patent No. 5,839,592) and Acton (U.S. Patent No. 3,006,493).

c. Third rejection: Whether the examiner has rejected claims 41-48 under 35 U.S.C. 103(a) as being unpatentable over Geiger (U.S. Patent No. 4,473,163) in view of Hayes (U.S. Patent 5,839,592) and Osip et al. (U.S. Patent No. 4,991,731).

7. Arguments

- a. The examiner's rejection of claims 49 and 52-55 under 35 U.S.C. 103(a) as being unpatentable over Geiger in view of Lecinski and Acton
-

In the final Office Action of December 30, 2005 the examiner stated that Geiger teaches a lid assembly 1 comprising an outer lid 2 and an inner lid 3, the outer lid consisting of a top part (between lead lines 17 and 18), a cylindrical collar (at 24), threads 5 and 6, and a single inwardly-extending protrusion 23b. The examiner admitted that "Geiger does not teach the third layer of the inner lid, nor does Geiger teach the inner lid being planar." The examiner asserted that, based on the inner lid of Lecinski having a third layer with a lower friction coefficient (citing page 2, lines 47-53), it would have been obvious to add a third layer to the inner lid of Geiger "to protect the metal." He also asserted that, based on the inner lid of Acton being planar, it would have been obvious to utilize a planar inner lid in Geiger "to simplify the manufacturing process by eliminating more complicated outlines." He also argued that it would have been obvious to exclude projections 23a, 23c and 23d in Geiger (leaving one projection 23b) because it is routine to eliminate an element and its function.

This rejection is without merit and should be reversed.

Geiger discloses a screw cap 1 for a container 8 which includes an outer cap 2 and an inner cap 3, the outer cap 2 including inner threads 5, 6 for engagement with threads 9, 10 on the external surface of neck 7 of container 8 and projections 23a-23d which, when the outer cap 2 is

unscrewed relative to the neck 9, will raise the inner cap 3 (see Fig. 1). The inner cap 3 is made of deep-drawn sheet metal (col. 3, line 38) which provides an annular groove 14 at its periphery containing a soft-elastic sealing layer 12 that engages the face of the opening edge 13 of the neck 7, and a downwardly-sloping outer edge portion 16 that defines a lower edge 22 for contact with projection 23b. Five different embodiments of the inner cap are depicted in Figs. 1, 4, 7, 8 and 9; however, all include a downwardly sloping peripheral wall part which is contacted by an inner projection of the outer cap to lift the inner lid (see column 2, lines 65-68). Clearly, none of the inner cap embodiments are "planar."

Lecinski discloses a composite closure which includes a ring member 20 and a closure panel 22 for positioning on a container neck finish 14. The closure panel 22 includes a panel member 36 which has an external protective coating 38 over its upper and lower surfaces, and is configured to have a peripheral, annular, downwardly-open channel 40 for containing a gasket 42 which is formed of a sealing material.

Acton discloses a closure cap 1 which includes a cover portion 2 with a skirt 3, and a paperboard or rubber liner 6 therewithin that can contact the finish 11 of the container 10. The liner 6 appears to be planar and is retained within the cover portion 2 by lugs 7.

The appellant asserts that there is no reasonable "teaching" in Lecinski that would suggest applying another layer to the inner cap 3 of Geiger. In addition, although the inner lid 6 in Acton does appear to be planar, there is no discussion of this fact in the specification and thus

absolutely no "teaching" that would suggest use of a planar inner lid in some other environment. Indeed, reconstructing the inner cap of Geiger to be "completely planar" would mean omission of the downwardly-extending peripheral wall part found on each embodiment of the Geiger invention. This would certainly not be "obvious"! And, the examiner has provided no reasoning why it would be obvious to exclude the projections 23a, 23c and 23d in Geiger!

- b. The examiner's rejection of claims 49 and 52-55 under 35 U.S.C. 103(a) as being unpatentable over Geiger in view of Hayes and Acton
-

In the final Office Action of December 30, 2005, the examiner stated that Geiger teaches a lid assembly 1 comprising an outer lid 2 and an inner lid 3, the outer lid consisting of a top part (between lead lines 17 and 18), a cylindrical collar (at 24), threads 5 and 6, and a single inwardly-extending protrusion 23b. The examiner admitted that Geiger admitted that "Geiger does not teach the third layer of the inner lid nor does Geiger teach the inner lid being planar." The examiner asserted that, based on the inner lid of Hayes having a third layer with a lower friction coefficient (citing column 4, lines 9-20), it would have been obvious to add a third layer to the inner lid of Geiger "to protect the metal." He also asserted that, based on the inner lid of Acton being planar, it would have been obvious to utilize a planar inner lid in Geiger "to simplify the manufacturing process by eliminating more complicated outlines." He also argued that it would have been obvious to exclude

projections 23a, 23c and 23d in Geiger (leaving one projection 23b) because it is routine to eliminate an element and its function.

This rejection is without merit and should be reversed.

Geiger and Acton are summarized *supra*.

Hayes discloses a composite closure for a container, the closure including a ring 13 and a disk 14. The disk rests on a rim 16 of container 11 and includes an annular channel 18 and a central body portion 17. The disk includes an upper layer 41, a lower layer 42 and an optional middle layer 43. According to column 4, lines 9-14, the upper layer 41 is generally stiffer than the lower layer 42 and thicker. It will also have a higher softening and melting temperature than the lower layer 42. The middle layer 43 acts as an oxygen barrier (column 4, lines 31-33).

The examiner asserts that, based on the use of middle layer 43 in the disk 14 of Hayes, it would have been obvious to employ a third layer in the inner lid of Geiger. However, this conclusion is incorrect because there would be no reason to add an oxygen barrier to the inner lid of Geiger since it already includes a layer 3 of sheet metal, which by its nature is impermeable. And it would not be "obvious" based on Hayes to reconstruct the inner cap 3 of Geiger to be "completely planar" as the outer edge portion of the Geiger cap is critical to his invention. And, the examiner has set forth no reasoning as to why it would be obvious to exclude the projections 23a, 23c and 23d the outer lid 2 of Geiger.

- c. The examiner's rejection of claims 41-45 under 35 U.S.C. 103(a) as being unpatentable over Geiger in view of Hayes and Osip et al.
-

Geiger and Hayes are summarized above.

Osip et al. disclose a retortable composite closure 10 for a plastic container which includes a sidewall 18 and a metallic disk 40 therein, the disk 40 having a coating 42 on a bottom surface thereof.

The examiner asserts that, based on the use of metallic disk 40 in Osip et al., that it would be obvious "to provide the modified lid assembly of Geiger with the metal being aluminum ... to give the inner lid the rigidity characteristics of aluminum" (final Office Action, page 4).

However, nothing in Osip et al. can overcome the deficiencies in the examiner's rejection of claim 55 based on Geiger in view of Lecinski and Acton, and therefore the examiner's rejection against claims 41-46 must fail.

8. Conclusions

It is asserted that the examiner's rejections are incorrect and should be reversed. Claims 41-49 and 52-55 should be allowed.

The government filing fee should be charged to Deposit Account No.

04-2223.

Respectfully submitted,

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CLAIMS APPENDIX A

41. A lid assembly according to claim 55, wherein the second layer consists of aluminum.
42. A lid assembly according to claim 41, wherein the first layer consists of low density polyolefins.
43. A lid assembly according to claim 42, wherein the first layer consists of a low density polyethylenes.
44. A lid assembly according to claim 43, wherein the third layer consists of polyolefins.
45. A lid assembly according to claim 44, wherein the third layer consists of polyethylene.
46. A lid assembly according to claim 44, wherein the third layer consists of polypropylene.
47. A lid assembly according to claim 44, wherein the third layer consists of ethylene vinyl acetate plastics.
48. A lid assembly according to claim 44, wherein the third layer consists of polyester.
49. A lid assembly according to claim 55, wherein the diameter of the inner lid is larger than an external diameter of the container neck, but simultaneously smaller than an internal diameter of the outer lid, said protrusion of the collar extending radially inwardly to an outer surface of the container neck.
52. A lid assembly according to claim 49, wherein the centre of the inner lid is secured to the outer lid with a rotatable securing means,

wherein a container vacuum through the inner lid pulls the centre of the outer lid downwards, thereby deflecting a subarea of the outer lid.

53. A lid assembly according to claim 52, wherein the collar of the lid has an inwardly directed annular ring as a securing means for the inner lid, said ring extending in an oblique direction relative to the inner lid.

54. A method of opening a lid assembly according to claim 55, by means of twisting it off the neck of the container, wherein during the twisting off of the lid a pointwise upwardly directed pressure is created on the edge of the inner lid, an opening to the volume of the container thus being created and the volume being vented.

55. A lid assembly for closing an opening in a neck of a container, said lid assembly comprising an outer lid member and a planar, multilayered inner lid member,

said outer lid member consisting of a top part and a cylindrical collar, said cylindrical collar defining inwardly-extending threads and a single inwardly-extending protrusion which is located below the inner lid member at a level of an upper edge of the neck of the container when the lid assembly is attached to the container, and

said planar, multilayered inner lid member consisting of a first layer for sealing against the upper edge of the container and made of a soft thermoplastic elastomer, a second layer having gas barrier properties, and a third layer consisting of thermoplastics which covers the second layer, said third layer making contact with the outer lid, wherein

said third layer has a first relatively low friction coefficient with said outer lid and said first layer has a second relatively higher friction coefficient with the upper edge of the neck of the container,

wherein during removal of the lid assembly from a container, the outer lid member is rotated relative to the neck of the container and said protrusion will exert an upward pressure against an edge of the inner lid member to cause the inner lid member to be pointwise separated from the upper edge of the neck as the outer lid member is rotated.

EVIDENCE APPENDIX B

Not applicable.

RELATED PROCEEDINGS APPENDIX C

None.